

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Master File No. 12-md-02311

In Re: All Cases

Honorable Marianne O. Battani
Special Master Gene J. Esshaki

This Document Relates to:
Truck and Equipment Dealer Actions

**ORDER REGARDING
MOTION TO COMPEL AGAINST HONDA**

Upon consideration of certain Plaintiffs' and Defendants' (collectively, the "Parties")¹ Renewed Motion to Compel Discovery from Non-Party Original Equipment Manufacturers including American Honda Motor Co., Inc.; Honda Manufacturing of Indiana, LLC; Honda North America, Inc.; Honda of America Mfg., Inc.; Honda of South Carolina Mfg., Inc.; Honda Precision Parts of Georgia, LLC; Honda R&D Americas, Inc.; Honda Research Institute USA, Inc.; and Honda Transmission Manufacturing of America, Inc. (collectively "Honda"), and arguments by counsel before the Special Master on December 9, 2016, the Special Master hereby enters the following Order:

¹ The "Parties" are End-Payor Plaintiffs ("EPPs"), Truck and Equipment Dealer Plaintiffs ("TEDPs"), the State of Florida, the State of Indiana, and certain Defendants in *In re Automotive Parts Antitrust Litigation*, Master File No. 2:12-md-02311 (E.D. Mich.). Automobile Dealership Plaintiffs ("ADPs") filed a statement of concurrence, concurring in part with the requests and brief of the Parties. *See* Case No. 2:12-md-02311-MOB-MKM, Doc. No. 1509. The Parties, together with ADPs, are collectively the "Serving Parties."

WHEREAS, at the June 23, 2016 Motion² hearing, the Court ordered that the Parties may serve Rule 45 subpoenas and conduct Rule 30(b)(6) depositions of Honda;

WHEREAS, Honda and the Parties met and conferred regarding the information at issue in the Motion on at least May 2, 2016; June 8, 2016; October 13, 2016, and October 17, 2016;

WHEREAS, TEDPs asked about Honda's plan to produce documents, data, and/or a Rule 30(b)(6) witness concerning Honda's All Terrain Vehicles ("ATVs") and Side-by-Sides ("SXSs");

WHEREAS, Honda objects to TEDPs' requests on the basis that the ATVs and SXSs business was separate from its passenger car business (and that purchasing of parts for ATVs and SXSs was done separately from purchasing for passenger cars), that the definition of "Vehicle" in the subpoena did not encompass ATVs or SXSs, that Honda's production of ATVs and SXSs was small, and that the burdens of such production outweighed the potential benefits;

WHEREAS, the definition of the word "Vehicle" in the subpoena means "means an automobile or other motor Vehicle that is principally used for transporting from one to eight passengers and is designed to operate primarily on roads, typically with two or four wheels, including sedans, sport-utility Vehicles, motorcycles, and pickup trucks. In addition, to the extent that any of the Requests seek documents with respect to Wire Harness Systems or Bearings. Vehicle also includes medium-duty (Class 4, 5, 6, & 7) trucks, heavy-duty (Class 8) trucks, buses, commercial Vehicles, construction equipment, mining equipment, agricultural equipment, railway Vehicles, and other similar Vehicles.";

² The "Motion" refers to The Parties' Motion to Compel Discovery from Non-Party Original Equipment Manufacturers, 12-md-2311, ECF No. 1185.

WHEREAS, ATVs and SXSs are included within the definition of the class in TEDPs' *Starters & Alternators* Compl., 2:15-cv-14096-MFL-RSW, ECF Doc. No. 1 (Complaint), 2:15-cv-00707-MOB-MKM ECF Doc. No. 13 (First Amended Complaint) (TEDPs "file this Complaint on behalf of themselves and all other similarly situated dealers...of ...agricultural equipment (*including ATVs designed and/or marketed for agricultural use*)....") (emphasis added); TEDPs' *Radiators* Compl., 2:15-cv-14097-MOB-MKM, ECF Doc No. 1 (same); *see also* TEDPs' *Bearings, Wire Harnesses, and Occupant Safety Restraint Systems* Compls. (pleading claims on behalf of dealers of agricultural equipment);

WHEREAS, the Parties filed a Renewed Motion to Compel Discovery from Certain Non-Party Original Equipment Manufacturers and Their Affiliated Entities (collectively, "OEMs"), seeking to compel responses to a narrowed list of requests from uniform subpoenas served on the non-party original equipment manufacturers and their affiliates pursuant to the Court's orders at ECF No. 277, Case No. 2:12-cv-00100 and ECF No. 949, Case No. 2:12-md-002311 (the "Renewed Motion");

WHEREAS, Honda submitted a letter of opposition to Special Master on November 11, 2016;

WHEREAS, Honda produced additional documents to the Parties on November 16, 2016;

WHEREAS, on November 18, 2016, TEDPs inquired whether Honda's November 16, 2016 production included documents regarding Honda ATVs and SXSs;

WHEREAS, on November 18, 2016; Honda reiterated its prior contention that ATVs and SXSs were outside the scope of the subpoena;

WHEREAS, Honda filed a response to the Renewed Motion on November 22, 2016;

WHEREAS, the Parties filed a reply brief in support of the Renewed Motion on December 2, 2016;

WHEREAS, a mediation between the Parties and Honda took place on December 8, 2016;

WHEREAS, on December 9, 2016, the Special Master held a hearing regarding the disputes raised in the Renewed Motion during which the Special Master heard argument from the various SSEs and Parties, and then issued rulings on the Renewed Motion;

WHEREAS, the Special Master granted in part and denied in part the Renewed Motion;

With regard to Honda, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. In accordance with the Special Master's Order on the Renewed Motion and/or Honda's agreement reached with the Parties with regard to the Renewed Motion, Honda shall produce otherwise responsive data and documents related to Honda ATVs and SXSs.
2. Honda shall produce this information to TEDPs and Defendants. The confidentiality of Honda's production shall be in accordance with the Order entered by the Special Master on the Renewed Motion. Any third-party notice issues shall be handled in accordance with the Order entered by the Special Master on the Renewed Motion.
3. Data and documents regarding the upstream purchases of ATVs and SXSs vehicle parts by Honda can be limited to the five (5) active Auto Parts cases in which TEDPs have filed, *i.e.*, (1) *Bearings*, (2) *Occupant Safety Systems*, (3) *Radiators*, (4) *Starters*, and (5) *Alternators*.

4. Data and documents regarding downstream sales of ATVs and SXSs shall be limited to documents and data that are (i) maintained in the ordinary course of Honda's business; and (ii) reasonably accessible, in accordance with the Order entered by the Special Master on the Renewed Motion.
5. Honda shall have the option to first produce information for the *Bearings* case where doing so would be less burdensome and costly than a production across all five TEDPs' Auto Parts cases at one time, with production dates to be decided later for the remaining Auto Parts cases.
6. Cost-sharing shall be in accordance with the Order entered by the Special Master on the Renewed Motion.
7. This Order shall be subject to appeal to The Honorable Marianne O. Battani, pursuant to the Order Appointing A Master (ECF No. 792). Any party that wishes to file an objection to this Order must do so within 14 of the ECF filing date of this Order. Responses shall be due ten (10) days after the date on which the objections are filed, and replies shall be due five (5) days after the date on which the responses are filed. Failure to meet this deadline results in waiver of any objection to the Master's order, absent good cause shown. Order Appointing A Master, § II.B.

IT IS SO ORDERED.

DATED: December 29, 2016

/s/ Gene J. Esshaki
GENE J. ESSHAKI
SPECIAL MASTER

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on December 29, 2016.

s/ Kay Doaks
Case Manager

